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C O N F I D E N T I A L SECTION 01 OF 02 KABUL 000577

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SUBJECT: GIROA APPEARS TO RETREAT ON ELECTORAL REFORM

Classified By: Ambassador Karl W. Eikenberry; Reasons (b) and (d)

¶1. (C) Summary: President Karzai's Cabinet of Ministers has voted to approve an electoral decree that would "nationalize" the Electoral Complaints Commission (ECC) by removing the ECC's three international commissioners. If Karzai signs the decree, it will almost certainly hinder fraud prevention and detection during the upcoming Parliamentary elections and make more problematic electoral reform and democratic progress. Maintaining the mixed Afghan-international character of the ECC was one of two recommended preconditions for our assistance to the September Parliamentary elections. Even if Karzai agrees to minority international representation in the ECC, the international community will find weakened its primary mechanism for checking fraud committed or allowed by the Afghan government.
End Summary.

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Electoral Reform Problematic
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¶2. (C) On February 13, Afghanistan's Cabinet of Ministers voted to nationalize the Electoral Complaints Commission (ECC) by removing the three international commissioners from the electoral monitoring body and replacing them with Afghans. The next step is for President Karzai to sign an electoral decree with this determination. UNAMA SRSG Kai Eide's inaction on appointing the three international commissioners, mandated in Afghanistan's 2005 Electoral Law, likely prompted President Karzai to take advantage of this vacuum to remove international participation. In a February 11 meeting of ambassadors convened by Eide (septel), he had been urged to meet first with Karzai if possible, but to go ahead with the nominations if Karzai did not agree to a meeting within the next 24 hours, e.g., by the afternoon of February 12. However, Eide did not meet with Karzai until 13 February, and confronted with the cabinet decision, instead encouraged the President to accept a formula of minority foreign participation on the ECC (2 of 5).

¶3. (SBU) Although we have not confirmed the proposed composition of the new ECC, according to UNAMA, the head of the new ECC would be appointed by the Supreme Court. Parliament's Upper and Lower Houses would each designate a commissioner, but they could not be members of Parliament. The President and the Afghan Independent Human Rights Commission (AIHRC) would designate the remaining two commissioners.

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ECC Origins, Composition, and Authority
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¶4. (U) The ECC is not grounded in the Afghan constitution, but was instead established in accordance with Article 52 of Afghanistan's 2005 Electoral Law. According to Article 53, EC membership includes five members: three internationals appointed by the UN SRSG and two Afghans -- one appointed by

the Supreme Court and the other by the Afghan Independent Human Rights Commission (AIHRC).

¶5. (U) While there is no mention in the Electoral Law regarding the funding of the ECC, it has been funded by the international donor community through UNDP-Elect. UNDP-Elect paid USD 11 million to the ECC for the 2009 Presidential and Provincial Council elections. The total international contribution to the 2009 elections, including to UNDP-Elect and bilateral assistance, was USD 488.6 million -- USD 331.2 million for UNDP Elect and additional USD 157.4 million in bilateral aid. Our contribution was USD 263 million -- over half of the total international contribution -- of which 120 million was through the UN and 143 million via direct bilateral assistance. The Afghan government contributed USD 1.5 million to the 2009 elections. Approximately USD 28 million of U.S. contributions to UNDP-Elect (out of a total of USD 90 million in international donor contributions) have not been spent. UNDP-Elect's proposed budget for the 2010 Parliamentary elections is USD 160 million.

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Assessment and Remaining Options
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¶6. (C) Maintaining the mixed Afghan-international character of the ECC is one of the two recommended preconditions for international assistance to facilitate the September 18 Parliamentary elections. Even if Karzai agrees to minority international representation in the ECC, the international community's primary mechanism for checking fraud tolerated or orchestrated by the Afghan government will be eroded. It was

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the ECC's international presence that enabled it to demand an audit of thousands of suspect ballots from the August 2009 presidential election; without ECC authority, the IEC would likely have swept the massive electoral fraud under the rug and have declared Karzai the unquestionable victor on the first round.

¶7. (SBU) Our remaining leverage is limited. We could decide to withhold funds from the ECC for the September 18 Parliamentary elections, but given that our and other donor funds are channeled through a "basket fund" managed by UNDP-Elect to the ECC, as well as to the Independent Elections Commission (IEC), we would likely need to withdraw our overall support for UNDP-Elect. Even if we could stipulate to UNDP-Elect that we do not want any USG funds to support the ECC, another donor would likely fund it anyway. In a February 13 meeting with donors, five countries -- the UK, Germany, Canada, The Netherlands, and Estonia -- supported our position on the ECC. However, the Japanese said they would support the Afghan elections regardless of the ECC's and IEC's composition.

¶8. (SBU) We could also consider reducing our bilateral elections assistance, but given the bulk of these funds help train observers and party poll watchers, strengthen civil society and political parties, encourage women's participation in the electoral process, and provide voter education, withholding funds would only serve to further erode the electoral process. On the contrary, we should consider boosting our bilateral assistance and using it to target opportunities to mitigate fraud. We could also muster opposition support against the electoral reform decree. When we met with key Abdullah supporters on February 10 and 11 (septel). they were surprised to learn about the proposed presidential decree and that it would nationalize the ECC. They noted that these changes would backslide anti-fraud measures and allow Karzai to further consolidate his power over the ECC and the Parliament, which they termed "the only two state institutions left with some degree of autonomy."

¶9. (C) The SRSB's inaction on appointing the three international commissioners probably encouraged President

Karzai to propose the removal of international participation from the ECC. Ever the agile tactician, Karzai appears to have timed the decision to nationalize the ECC to coincide with the joint ISAF-Afghan Marjah military offensive, likely calculating that we would not wish to challenge him at this crucial juncture.

¶10. (C) On the other hand, it is also clear that the ECC "nationalization" is an issue many Afghans will support, or at least, because of its resonance with sovereignty, will not oppose. Abdullah supporters and some in civil society will publicly oppose the measure, but only the international community - and in particular the United States - has the influence to ensure the ECC status quo. The payoff is probably not worth the cost for several reasons. First, some ECC missteps in 2009 diminished its own reputation, so the issue is not black and white. Second, fighting it out to ensure the status quo gives us more ownership of the parliamentary elections than we might desire - further entrenchment in Afghan governance eight plus years into our mission is not necessarily advisable. Third, Karzai may well find himself more exposed and responsive to Afghan demands for real electoral reform if he cannot use the international community as a scapegoat.

¶11. (C) Ambassador Eikenberry will meet with President Karzai to discuss minority foreign presence on the ECC. SRSG Eide has identified (and suggested to Karzai) a renowned South African candidate as well as one from a Muslim country. A formula under which at least one foreign member's vote could be required for any binding ECC decision would probably be acceptable. An approach in which the proposed 2010 ECC configuration was viewed as transitional might be palatable to most Afghans -- again, with an increasing majority subject to the appeal of the concept of "nationalization". Beyond this, a truly independent and capable Independent Elections Commission will eventually obviate the need for an ECC.

¶12. (C) Karzai's willingness or unwillingness to consider our perspectives and serious efforts to build a sustainable system of representative governance will be a good indication of his willingness to partner with us in the year ahead.

Eikenberry